

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDMUND L. CARBONEAU)

Appearances:

For Appellant: Edmund L. Carboneau,
in pro. per.

For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Edmund L. Carboneau against a proposed assessment of additional personal income tax in the amount of \$814.73 for the year 1974.

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In August 1972, appellant was fired by the United States Navy Department from his job as a federal civil service fire chief at Miramar Naval Air Station in San Diego. Previously he had been commended for his professional effectiveness and personal courage during the Tet offensive in Vietnam. Initially, Mr. Carboneau hired legal counsel to assist him in retaining his job at Miramar. Additional legal services were required later in connection with his efforts to gain reinstatement. On January 18, 1974, the Civil Service Commission ruled that he was fired **unfairly**, and appellant was reinstated to his former position.

On his personal income tax return for the year 1974, appellant deducted \$560.00 as legal costs and **\$45,000.00** as "attorney fees to retain employment." In auditing his **return**, respondent asked appellant to substantiate the claimed legal expenses. In response, appellant stated that he had transferred property known as the Altadena Apartments to pay the remainder of his bill for legal expenses incurred relative to retaining his position. (Appellant had **previously** signed an undated deed and turned it over to the attorneys as security for the legal fees owed to them.) He **estimated** that the property had a fair market value of **\$125,000.00** at the time of transfer and was encumbered to the extent of **\$77,377.40**. The difference of **\$47,622.60** was rounded to **\$45,000.00**. Appellant was unable to produce any agreement between the **parties relative** to the amount of legal expenses paid by the transfer. In addition, appellant was unable to produce any documentation showing the amount charged for the legal services. Respondent thereafter determined that a legal expense of **\$15,150.00** was allowable and disallowed the balance of the **\$45,000.00** claimed. The partial disallowance of the deduction for attorney fees resulted in the issuance of a deficiency assessment. Appellant contested the proposed assessment and this appeal followed.

The issue presented for determination, therefore, is whether appellant has established that he is entitled to a deduction in the amount of **\$45,000.00** for legal expenses incurred in the effort to retain his position as a federal civil fire chief at Miramar Naval Air Station.

Revenue and Taxation Code section 17202 grants a deduction for **"all** the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade **or** business" This section is

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substantially identical to its federal counterpart, Internal Revenue Code section 162. Therefore, cases interpreting section 162 are highly persuasive as to the proper application of section 17202. (Meanley v. McColgan, 49 Cal. App. 2d 203 [121 P.2d 451] (1942).) The federal authorities hold that legal expenses incurred by a taxpayer in order to be reinstated to his job are deductible as business expenses. (See Caruso v. United States of America, 236 F. Supp. 88 (D.N.J. 1964).) The Franchise Tax Board therefore does not dispute appellant's entitlement to a business expense deduction for legal expenses incurred to be reinstated to his position as fire chief, but disputes instead the amount of deduction claimed.

When property is transferred in order to satisfy a debt, a deduction will generally be allowed for fair market value of the property at the time of transfer. (See International-Freighting Corp., Inc. v. Commissioner, 135 F.2d 310 (2nd Cir. 1943).) The judicial definition of fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under compulsion to buy or sell. (See Marshman v. Commissioner, 279 F.2d 27 (6th Cir. 1960) cert. den., 364 U.S. 918 [5 L. Ed. 2d 259] (1960); Fitts' Estate v. Commissioner, 237 F.2d 729 (8th Cir. 1956).)

Respondent determined the fair market value of the Altadena Apartments on January 1, 1974, the date of transfer, to be \$92,528.00. Its determination was principally based upon the fact that five months earlier, appellant rejected a purchase offer of \$82,348.00 and made a counter offer of \$92,348.00. Respondent also points out that the fair market value of \$92,528.00 is generally consistent with the property tax assessment of \$95,000.00 determined in March 1974.

On the other side, appellant contends that a fair market value of \$125,000.00 is reasonable, and supports his position by submitting evidence of the higher selling prices of similar units during a period from 1970 to 1973. He attempts dissociation with the counter offer by alleging that it was made under strong pressure from his attorneys, and that participation on his part was involuntary. In addition, appellant submitted copies of San Diego County Assessor's records which reflect several transfers of the Altadena Apartments and a fair market value of the property of \$95,000 in the fiscal year 1974-75, \$105,000 in fiscal year 1976-77,

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\$121,000 in fiscal year 1977-78, and \$160,100 in fiscal year 1978-79.

As to appellant's first point, price comparison with allegedly similar units is, in and of itself, not determinative of fair market value; other factors must be considered such as the location and general condition of the subject units. As to the second point, appellant was admittedly present at the meeting with the potential buyers when the \$92,528 counter offer was made. His silence may be construed to constitute tacit approval of the actions of his attorneys,, and he has failed to show that the counter offer was not freely made.

The right of a taxpayer to any deduction does not depend upon equitable considerations, but is entirely a matter of legislative grace, and the burden is upon the taxpayer to prove his entitlement to the full deduction claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 (78 L. Ed. 1348) (1934); Deputy v. du Pont, 308 U.S. 488 (84 L. Ed. 416) (1940).) Unfortunately, appellant has failed to substantiate the \$45,000 deduction. We sympathize with appellant in the difficulties he suffered in connection with his civil service employment. We are also aware of appellant's deep conviction that his attorneys were unfair in their financial dealings with him. Such grievances, however, cannot be resolved by this board.

Based upon the record before us, appellant has not proven his entitlement to the full amount of the claimed deduction. Under the circumstances, we must sustain respondent's finding in this case.


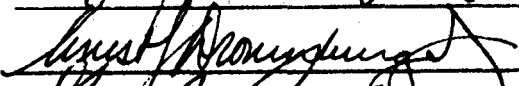
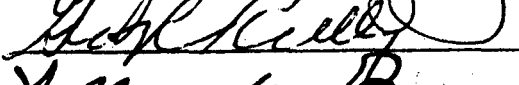
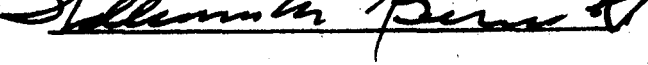
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ORDER

Pursuant to the **views** expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of, the Franchise Tax Board on the protest of Edmund L. Carboneau against a proposed assessment of additional personal income tax in the amount of \$814.73 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of September, 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member